



Paper No. 4

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COPY MAILED**MAY 25 2001****OFFICE OF PETITIONS****A/C PATENTS**

In re Application of :
Nurith Shaklai :
Application No. 09/661,509 :
Filed: September 13, 2000 : DECISION GRANTING PETITION
Attorney Docket No. 1075.00022 :

This is a decision on the petition filed November 20, 2000, requesting that the above-identified application be accorded a filing date of September 13, 2000.

On September 13, 2000, applicant filed the above-identified application. On November 6, 2000, the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application (Notice), requiring a complete specification including at least one claim as prescribed by 35 U.S.C. 112, as well as a newly executed oath or declaration covering the missing item.

In response, on November 20, 2000, applicant filed the present petition and the \$130.00 petition fee. Applicant asserted: "This Continuation-in-Part application is entitled to be accorded the filing date of September 13, 2000 as the specification as filed does include Claims 1 through 13 and 31 and 32 as set forth in the Preliminary Amendment submitted September 13, 2000." Petition dated 11/20/00, p. 1. Additionally, applicant requested a refund of the petition fee.

Upon review of the record, the preliminary amendment submitted on September 13, 2000, contained Claims 1, 31 and 32. The Office notes that applicant's transmittal indicated that the above-identified application consisted of 54 page of specification. However, only 24 pages of specification and one unnumbered page of abstract have been located in the file. Nevertheless, the papers are sufficient to accord the application a filing date of September 13, 2000.

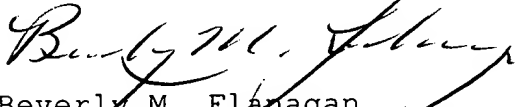
In view of the above, the petition is granted.

The Notice mailed on November 6, 2000, was proper, and therefore, applicant is not entitled to a refund of the petition fee. Pursuant to 37 U.S.C. 112, "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." In the above-identified application, the specification did not conclude with any claims. However, the Office will construe the claims contained in the preliminary amendment as being present upon the filing of the application.

The declaration submitted with the application is informal. According to applicant's transmittal, the declaration is a copy of the declaration in prior application No. 08/945,264 executed on November 11, 1997. Since the above-identified application is a continuation-in-part of prior application No. 09/480,812, which is a divisional of prior application No. 08/945,264, the application requires a new oath or declaration which identifies the specification and preliminary amendment filed on September 13, 2000. See 37 CFR 1.63(d). Additionally, applicant must submit the requisite surcharge for the late filing of an oath or declaration under 37 CFR 1.16(e). Applicant is given **two (2) months** from the date of this decision to submit an oath or declaration and the \$65.00 surcharge. Extensions of time are available under 37 CFR 1.136(a).

The application will be returned to the Office of Initial Patent Examination for further processing with a filing date of September 13, 2000, using the specification and the preliminary amendment, containing Claims 1, 31 and 32, filed on that date. Claims 1, 31 and 32 will be renumbered by the Examiner in due course.

Any inquiries related to this decision should be directed to Petitions Attorney Christina T. Tartera at (703) 306-5589.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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